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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 346 OF 2007

Dr. Nitin S. Garg,
Indian Inhabitant of Pune,
presently residing at 27,
Parijat Society, Bibwewadi,
Pune. ... Petitioner

Versus

1. State of Maharashtra,
through the Secretary,
Medical Education Department,
Mantralaya, Bombay 400 032.

2. Directorate of Medical Education
& Research, having its office
at St. George Hospital Compound,
Government Dental College Bldg.
4th Floor, Near CST Station,
Mumbai 400 001. ... Respondents

Mr. M.M. Vashi for Petitioner.

Mr. A.A. Kumbhakoni, Associate Advocate General with Mrs. M.P. Thakur, A.G.P. for Respondent Nos. 1 and 2.

WITH
WRIT PETITION NO. 355 OF 2007

Mr. Sandeep Narayan Deore,
Age 25 years,
residing at Flat No. 9,
2nd Floor, Rohini Ravi Co-op.
Hsg. Society, Canada Corner,
Behind People Bank Nashik. ... Petitioner

Versus

1. State of Maharashtra,
through its Department of
Medical Education and Drugs,
Mantralaya, Bombay.

2. Directorate of Medical Education
& Research, St. George's Hospital
Compound, GPO, Mumbai 400 001.

3. Dean, B.J. Medical College, Pune.

4. Dean, Dr. V.M. Medical College,
   Solapur. ... Respondents

Mr. A.A. Kocharekar for Petitioner.

Mr. A.A. Kumbhakoni, Associate Advocate General with Mrs. M.P. Thakur, A.G.P. for Respondent Nos. 1 and 2.

WITH
WRIT PETITION NO. 789 OF 2007

1. Aditi Vithal Ghodke,
   Age 23 years,
   residing at J-164, R.B.I.
   Staffs' Quarters, North Avenue,
   Santacruz (W), Mumbai 400 054.

2. Jainenera Shivdas Rahud,
   Age 26 years, residing at
   Flat F-3, Shubhangi Enclave,
   At Omkar Nagar Square,
   Nagpur - 27. ... Petitioners

Versus

1. State of Maharashtra,
   through its Department of
   Medical Education and Drugs,
   Mantralaya, Bombay.

2. Directorate of Medical Education
   & Research, St. George's Hospital
   Compound, GPO, Mumbai 400 001.

3. Dean, B.J. Medical College, Pune.

4. Dean, Dr. V.M. Medical College,
   Solapur. ... Respondents

Mr. V. M. Thorat for Petitioner.

Mr. A.A. Kumbhakoni, Associate Advocate General with Mrs. M.P. Thakur, A.G.P. for Respondents.

WITH
WRIT PETITION NO. 1260 OF 2007

Dr. Prakash Madhukar Dive,
Age 28 years, presently residing
at 206/B, Raj Sarita, Near
Bhakti Complex, Kandarpada, Dahisar
(West), Mumbai 400 068 and

permanent residence at/post Pokhari,
Tal. Nandgaon, District Nashik. ... Petitioner

Versus

1. State of Maharashtra,
   through its Department of
   Medical Education and Drugs,
   Mantralaya, Mumbai 400032.

2. Director,
   Directorate of Medical Education
   & Research (D.M.E.R.), CET Cell,
   St. George's Hospital Compound,
   Near GPO, C.S.T. Mumbai 400 001.

3. Dean,
   Swami Ramanand Teerth Rural
   Medical College, Ambajogaon,
   District Beed,
   Maharashtra 431 517. ... Respondents

Mr. L.N. Bedekar for Petitioner.

Mr. A.A. Kumbhakoni, Associate Advocate General with Mrs. M.P. Thakur, A.G.P. for Respondents.

WITH
WRIT PETITION NO. 1848 OF 2007

Dr. Sandeep Chandrakant Sabnis,
Age 27 years, permanent resident of
Ganpati Galli, Main Road,Ambad,
Taluka Ambad, District Jalna and
presently residing at C/o.
A.G. Ghotankar, W/A 1/104, Ajmera
Co-operative Housing Society
Limited, Masolkar Colony, Pimpri,
Pune 411 018. ... Petitioner

Versus

1. State of Maharashtra,
   through the Secretary,
   Medical Education Department,
   Mantralaya, Bombay 400 032.

2. Director of Medical Education
   & Research,
   St. George Hospital Compound,
   G.P.O. Mumbai 400 001. ... Respondents

Mr. A.A. Kocharekar for Petitioner.

Mr. A.A. Kumbhakoni, Associate Advocate General with Mrs. M.P. Thakur, A.G.P. for Respondents.

CORAM: F.I. REBELLO &
R.M. SAVANT,JJ.
DATED: MARCH 16, 2007

ORAL JUDGMENT (Per F.I. Rebello,J.):

1. Rule has been issued in Writ Petition Nos. 347 of 2007, Writ Petition No. 355 of 2007, and in Writ Petition No. 789 of 2007.

. Rule in Writ Petition No. 1260 of 2007 and Writ Petition No. 1848 of 2007. By order dated 16th January, 2007, the Petitioners were allowed to appear for the examination to be held on 21st January, 2007 and for that purpose to fill up the forms and take hall tickets. The results of the Petitioners in their written examination were to be declared. As far as the allotment of any seat for post graduate is concerned, that was to depend upon the Petitioners passing examination and finally being selected either in the first, second or third round of counselling. The court noted that they were informed that this year, the counselling is going to start in the first week of March, 2007. This being the position, the Rule was made returnable on 12th February, 2007. The respondents were asked to file their substantive reply by that date. A statement was made on behalf of the

Associate Advocate General that apart from the Petitioners herein, there were other students and the total number of such students was 31. The students, who had filled in their forms, were be allowed to appear for the examination and the results of their written examination were to be declared.

2. Considering the narrow controversy, we have heard the learned counsel for the parties and are disposing of these petitions finally on merits.

. A few facts may be set out. In terms of the law as it now stands, the admission to post graduate courses has to be completed by 31.5.2007. There was delay in declaring the results for the academic year 2006-07 pursuant to which, on a petition filed before the Hon'ble Supreme Court, time to fill in the seats was extended upto 30.6.2007. The State of Maharashtra for the purpose of admission for medical post graduate courses has issued brochure for medical post graduate courses. In so far as this petition is concerned, what is relevant are clauses 13.3.1 to 13.4 and Clause 15.1 to 15.3 which read as under :

> "13.3 The following candidates will not be held eligible for

subsequent admission process.

13.3.1 Accepting registration but not reporting to the college and/or not paying the fees.

13.3.2 Reporting to the college but not attending the residency programme regularly.

13.3.3 Unauthorised absence during the residency.

13.3.4 Paying the fees but not attending the Residency.

13.3.5 If the admission given by the Competent Authority is cancelled by the Dean/Director as a disciplinary action/defaulter.

13.3.6 If postgraduate registration given by the Competent Authority is resigned by the candidate.

13.4 Candidates may resign before 13th May, 2006, to be eligible for next PGM-CET-2007.

. The next relevant clause is Clause 15. The relevant Clauses of which are 15.1 to 15.3 and which are reproduced hereunder :

15.1 Candidate who has confirmed his/her admission may cancel it by submitting an application to the concerned Dean.

15.2 Candidate cancelling his/her admission on or before 13.5.2006 will be held eligible for subsequent PGM-CET-2007.

15.3 Candidate cancelling his/her admission after 13.5.2006 will not be eligible for subsequent two years for PGM-CET.

. In view of the extension of date for admission, notice was issued.

. Amendments were made to Para 12, Para 13, Para 14, Para 15 on extension of date for admission, which we may gainfully reproduce :

Sr.No.	Page No	Para	Pervious Dates	Revised Dates
5.	8	Para 12. Last day of resigning the seat to be eligible for PGM-CET-2007.	13th May,2006	22nd June,2006
6.		Para 13. Cancellation after this date will make the candidate not eligible for PGM-CET-2007.	13th May, 2006	22nd June, 2006
7.		Para 14. Cut off date for refund of fees.	13th May, 2006	22nd June, 2006
8.		Para 15. Last date for filing vacant seats for PG post.	13th May, 2006	30th June, 2006

. Each of the Petitioners were informed by letter dated 4.1.2007 that they were ineligible to appear for PGM-CET2007 examination. The language of the communication is similar in all the cases. The reasons cited were, that the Petitioners had appeared for the PGM-CET-2006 and according to preference given and the relevant merit position, the Petitioner’s was allotted a seat. The notice further stated that unfortunately the Petitioner did not join the course though the seat of his choice, according to relative merit was allotted. It is further stated that on account of non-joining

of the course by the Petitioner inspite of aforesaid allotment, the seat remained vacant and resultantly lapsed. Thus the Petitioner had rendered himself ineligible for appearing for PGM-CET-2007 in view of the regulations such as Rule No. 12.5 in PGM-CET-2007 information brochure, Rule No. 13.4, 15.2 and 15.3 in PGM-CET-2006 information brochure, Notification dated 6th May, 2006 and Rule No. 12 and 13 in information Brochure of Preference form filling of PGM-CET 2006. All the Petitioners were thus informed, that they were ineligible to appear for PGM-CET 2007 and their application forms seeking to appear for PGM-CET 2007 were rejected. The Petitioners aggrieved by that action, have preferred the present petitions.

4. Exh. A to the Petition is an application form and information brochure and Exh. B is the information brochure of preference system. Clause 5, one of the relevant clauses under the heading subsequent process reads as under :

> "If the candidate does not report by specified date, then his/her selection automatically stands cancelled and he/she will not be eligible for subsequent process."

. In Clause 4, the selection list was to be declared by 29.3.2006. The fees and documents had to be submitted by 6.6.2006. This rule at the highest prevents candidate from participating on being eligible for subsequent process for filling in the seats for PGM-CET 05.

. The Respondent State have filed their affidavit on 16.1.2007. The learned Associate Advocate General states that the said reply may be treated as reply in all the petitions. One of the contentions raised is, that the Petitioners principally were held ineligible for appearing at the PGM-CET-2007 because Petitioners are responsible for wasting a valuable seat in the Post-graduate Course conducted at Government/Corporation Medical College. It is pointed out that there are a total of 31 similarly situated students who have been held ineligible by the Competent Authority on the same and/or similar grounds namely wasting of a valuable seat in the Post-graduate courses conducted at Government/Corporation Medical Colleges during the Academic Year 2006-07, either on account of cancellation of the admission obtained or on account of non-reporting. The waste of the seat is nothing else but national waste. Considering that

there are numerous highly meritorious students in the waiting list, claiming for the grant of admission as against such seat, such loss is irreparable. Apart from that it is pointed out that as per the rules in force and considering the brochure and notification, the Petitioners are not entitled to any relief. The allotments had been made not only on the basis of relative merit position of the Petitioner and similarly situated students, but principally on the basis of the specific choices given in writing by these respondents. Some students who did not want to continue with the admission process without specifically giving in writing after 2nd June, 2006, those students had been held to be eligible, The Petitioners could have adopted the same procedure.

5. The contentions advanced on behalf of the Petitioners in all these Petitions are that the decision conveyed by letter dated 4.1.2007 is totally illegal and bad. It is submitted that in terms of the rules framed, it is only on the candidate getting himself registered and not joining is the candidate barred from appearing in the subsequent process. It is set out that by letter dated 4.1.2007 reference is made to Rule 7.12.5 PGM-CET 2007 Information Brochure. It is

submitted that information brochure of 2007 applies for the examinations to be held in PGM-CET-2006. It is also pointed out that Rule 13.4, 15.2 and 15.3 in PGM-cet 2006 information brochure does not apply. As the names of the selected candidates was announced only on 26th-27th June, 2006. It is also pointed out that the Petitioners' had not cancelled their candidature. In these circumstances, it is submitted that the action of the respondent is arbitrary, illegal, null and void.

. On behalf of the Respondents state, the learned Associate Advocate General submits that on account of failure by the Petitioners and similarly situated candidates, 31 seats remained vacant and will continue to remain vacant for the next few years. The Petitioners it is submitted were given course of their choice. Their failure to join the course would disentitle them for any discretionary reliefs. Apart from that in terms of the rules, they were rightly barred and in these circumstances, this court ought not interfere in the exercise of its extra ordinary jurisdiction.

6. We have heard the learned counsel. The crux of the issue is whether there was any provision in the information brochure in Medical Post graduate course and or Information brochure of Preference

system which disentitles or debars a candidate from participating for admission to PGM-CET 2007. We have already referred to Clause 5 of the Information brochure of Preference system to point out that the only effect on the candidate is that the candidate is not eligible for subsequent process which would mean the further process for that year and not for subsequent years.

. The real issue is whether Clause 12, 13 or 15 impose a bar on the Petitioners from being eligible for the PGM-CET 2007 read with Circular of 6.5.206. The circular of 6.5.2006 amended para 12 provides that the last date for resigning the seat to be eligible for PGM-CET 2007 from 13.5.2006 is revised to 22.6.2006. In other words, if the candidate had been allotted a seat on or before 22.6.2006 then that rule will apply. The rule did not take into consideration admission after 22.6.2006. In our opinion therefore, Clause 12 would not be a bar on the consideration of the student.

7. Clause 13.3 provides that candidate arenot eligible for subsequetn admission process. Those are cases where the candidate had registered but not reported and other situations set out therein. In the instant case, the Petitioners do not fall within Clause 13.3.1 to 13.3.6 and consequently

Clause 13.4 would not apply. Clause 13.4 as amended provides that resignation has to be by 22.6.2006. Even if Clause 13.4 is applied, the offer was made on 26th/27th June, 2006 and as such the said clause also would not apply.

8. The next relevant clause is Clause 15 which was amended from 13.5.2006 to 30.6.2006. This clause provided that if the candidate cancels his admission on or before 30.6.2006, such candidate would be eligible for subsequent PGM-CET 2007. In other words, Clause 15.3 provided for a situation of cancellation after 30.6.2006. In the instant case, Petitioners herein, did not confirm their admission or had paid fees. Consequently the question of cancelling the admission would not arise. A candidate would be eligible for admission for subsequent PGM-CET, if the candidate had cancelled the admission before 30.6.2006. In our opinion, therefore, that clause also would not apply as the Petitioner were never admitted.

9. We have to bear in mind that the action of the respondents is to bar the students from applying for post graduate courses. By order of 16.1.2007, while admitting the Petition, liberty was granted to the Petitioners to appear for the examination to be held on 21.1.2007 and for that purpose to fill

up the forms and take the hall tickets. The results of the Petitioners of their written examination were to be declared. As far as the allotment of any seats for post graduate course is concerned, that will depend upon the Petitioners passing the examination and finally being selected either in the first, second or third round of the process. As the counselling was going to be started in the first week of March, 207, Rule was made returnable on 12th February, 2007. The matter was not heard on that date. Before us the matter was placed for orders. But considering the controversy, with the consent of the counsel, we have heard the matter finally.

. In such matters, the notifications have to be construed, as they stand, without adding to or considering extraneous factors, including whether the seats remained unfilled would result in natural waste. As we have noted earlier, Para 13.3 of the Notification, only refers to the candidates who were admitted and registered. It does not apply to the cases of those candidates who were only informed of their selection. In terms of Clause 13.4 the last date for resigning was extended upto 22.6.2006 to be eligible for PGM-CET-2007. As the Petitioners were allotted seat only on 27.6.2006 and as they had not joined, Clause 13.4 would not

be attracted. Assuming it was attracted the bar was only in respect of those candidates who were admitted and not resigned before 22.6.2006. It is only those candidates who were not eligible for PGM-CET 2007. The Petitioners before us are not covered by the said paragraph. Paragraph 15 deals with the cancellation and refund. This applies to the candidate who has confirmed his/her admission by submitting application to the concerned Dean. The candidate cancelling his/or her admission before 13.5.2006 is held eligible for subsequent PGM-CET 2007. Para 15.2 will have to be read with Para 15.1. In other words, it will apply only to the candidates who had confirmed admission. In so far as Para 15.3 is concerned, if the candidate cancels admission after 30.6.2006 alone such candidate would not be eligible for subsequent two years for PGM CET.

. In the instant case, in terms of the affidavit of respondent, it is clear that the Petitioners were offered seat by publishing the same on the website of second Respondent on 22.6.2006 and four days time was given to the allottees to join the respective colleges. Even if it is considered the last date as 30.6.2006 and not 22.6.2006, the issue of the candidate cancelling the admission after 30.6.2006 did not arise. Even otherwise, if after

30.6.2006, the candidate had submitted and cancelled the admission, the cut off date for the admission being 30.6.2006, there was no question of filling any seats after 30.6.2006. This cannot be held against the Petitioners. In these circumstances, looking at it any way Clause 15.3 would not bar the Petitioners herein from being eligible for appearing for the 2007-PGM-CET.

10. The Associate Advocate General at the interim stage when the order was passed, on 16.1.2007 in these petitions, had stated and as noted by this court had very fairly sated that the total number of such students is 31. They were allowed to appear for the examination and results of the examination were ordered to be declared. Normally, we would like to restrict the relief only to the Petitioners who have approached this court. But considering the statement made on behalf of the State and the order of this court dated 16.1.2007, the benefit will have to go to Petitioners as also to others similarly situated students totalling 31.

11. Considering the above, the Petition will have to be allowed by issuing the following directions :

(a) The decision contained in the communication dated 4.1.2007, wherein the Petitioners were held

to be ineligible for the PGM -CET 2007 is quashed and set aside.

(b) The respondents are directed in the event the Petitioners and other similarly situated candidates, who were allowed to appear for the examination, have passed, then to consider them in their order of merit for selection for the post graduate course for PGM CET 2007.

. Rule made absolute accordingly in all the petitions. In the circumstances, of the case there shall be no order as to costs.

(R.M. SAVANT,J.) **(F.I.REBELLO, J.)**